

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Dublin Division

IN RE:	)	Chapter 13 Case
	)	Number <u>90-30050</u>
LUTRELL BRANTLEY	)	
	)	
Debtor	)	
_____)	)	
LUTRELL BRANTLEY	)	Filed
	)	at 4 O'clock & 50 PM
Movant	)	Date: 7-11-91
	)	
vs.	)	
	)	
FARMERS HOME ADMINISTRATION	)	
	)	
Respondent	)	

**MEMORANDUM AND ORDER**

Debtor, Lutrell Brantley, objects to Farmers Home Administration's ("FmHA") secured claim for arrearages in the amount of Seven Thousand Eight Hundred Fifteen and 40/100 (\$7,815.40) Dollars. Debtor asserts that she was receiving an interest credit on her house payment and therefore the arrearage claim is excessive. FmHA asserts in support of its claim that the existing interest credit agreement had expired and the mortgage arrearages should be calculated on the original contractual obligation. A hearing was held, evidence presented and the parties were afforded an opportunity to submit briefs. Based upon evidence introduced at the hearing and briefs submitted by the parties I make the following findings.

The facts are not in dispute. Lutrell Brantley purchased a house in Lumber City, Georgia on November 30, 1984 and executed a promissory note and deed to secure debt for Thirty-Four Thousand Five Hundred Sixty and No/100 (\$34,560.00) Dollars to FmHA for the purchase of the home. Payments on this promissory note were

Three Hundred Fifty and No/100 (\$350.00) Dollars per month for a term of 396 months (33 years). Debtor obtained an interest credit agreement from FmHA which reduced the monthly payment to One Hundred Four and No/100 (\$104.00) Dollars. The interest credit agreement was renewable annually. On February 18, 1986 the interest credit agreement was renewed for a 12-month period. On May 30, 1986 the debtor requested and received a 6-month moratorium of payments due to physical disability. On February 18, 1988 Mrs. Brantley agreed to an immediate increase of her monthly payments from One Hundred Four and No/100 (\$104.00) Dollars to One Hundred Fourteen and No/100 (\$114.00) Dollars. The additional Ten and No/100 (\$10.00) Dollars per month applied to her past due installments. Due to arrearages in payments, Mrs. Brantley's loan was accelerated for foreclosure on December 2, 1988. Mrs. Brantley's existing interest credit agreement expired in accordance with FmHA's regulations on February 18, 1989. A judicial foreclosure proceeding was filed by the United States Attorney's Office for the Southern District of Georgia on behalf of FmHA on July 20, 1989. On February 2, 1990 debtor filed for protection with this court pursuant to Chapter 13 of Title 11 United States Code. Predicated upon this filing on August 23, 1990 the District Court closed the judicial foreclosure proceeding for statistical purposes.

A proof of claim properly filed is deemed allowed unless a party in interest objects. 11 U.S.C. §502(a). A party objecting to a claim has the burden to go forward with evidence sufficient to defeat the claim. In re: Uneco, Inc., 532 F.2d 1204 (8th Cir. 1976); In re: Whet, Inc., 33 B.R. 424 (Bankr. Mass. 1983). The ultimate burden of proof substantiating the claim remains with the creditor. In re: Mobile Steel Company, 563 F.2d 692 (5th Cir. 1977).<sup>1</sup> Debtor has produced sufficient evidence of the existence of an interest credit agreement to meet her initial burden of going forward with evidence to dispute the claim. The ultimate

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<sup>1</sup>The Eleventh Circuit has adopted all decisions rendered by the Fifth Circuit on or before September 30, 1981 as binding precedent in this circuit. Bonner v. City of Prichard, Ala., 661 F.2d 1206 (11th Cir. 1981).

burden of proof substantiating the claim remains with the creditor. Mobile Steel Company, supra. FmHA has failed to carry this burden.

FmHA asserts that this court lacks the jurisdiction to alter the statutory scheme of 7 C.F.R. 1944.34(k)(1)(vii) which provides "[w]hen an account has been accelerated . . . if the

existing [interest credit] agreement expired before the foreclosure action is completed, an interest credit renewal agreement will be not prepared." According to FmHA, under this provision this court cannot now require FmHA to enter into such an interest credit agreement. FmHA's assertion ignores the remainder of this section.

The regulation states in pertinent part:

[W]hen an account has been accelerated and none of the conditions outlined in paragraph (k)(1) of this section exists, the Interest Credit Agreement will remain in effect until the final foreclosure action is completed; however, if the existing agreement expires before the foreclosure action is completed, an interest credit renewal agreement will not be prepared. If the foreclosure action is dismissed, withdrawn or terminates without sale of the property or payment of the loan in full, a renewal agreement will be prepared with an effective date as of the expiration of the previous agreement.

7 C.F.R. §1944.34(k)(2) (emphasis added).

The issue before this court is not, as contended by FmHA, whether the court has the jurisdiction to alter this federal regulation; but whether the stay of 11 U.S.C. §362(a) acts as a dismissal, withdrawal, or termination without sale of the property or payment of the loan in full as contemplated under the regulation requiring the preparation of a renewal agreement with an effective date as of the expiration of the previous agreement. See In re: Gaskin, 120 B.R. 13 (D.N.J. 1990).

The facts in Gaskin and the case at bar are indistinguishable. In this case, as in Gaskin, the foreclosure action was stayed by the bankruptcy filing

without sale of the property or payment of the loan in full. The regulation at issue contemplates the curing of arrears and the reinstatement of the loan and interest credit agreement. This curing of arrears contemplated under the regulation is precisely the same type of cure provided by Chapter 13 of the Bankruptcy Code. Id. at 17. The stay of §362(a) effectively stopped the foreclosure action. The curing of the default through the Chapter 13 plan returns the debtor to full compliance with the mortgage and restores the original mortgagee-mortgagor relationship. In re: Roach, 824 F.2d 1370, 1377 (3rd Cir. 1987). This curing of the prebankruptcy filing default and reinstatement of the debt under its predefault terms by the debtor's satisfactory compliance with the terms of the Chapter 13 plan fully terminates the foreclosure action requiring preparation of an interest credit renewal agreement with an effective date as of the expiration of the previous agreement under the regulation. Should the debtor fail in her Chapter 13 plan, any subsequent grant of relief from stay or dismissal of the case would allow FmHA to proceed with foreclosure. Should the debtor be successful in her plan, the regulations require a renewal agreement effective as of the expiration date of the previous agreement. Under the terms of the Chapter 13 plan, FmHA would have received the payments required under the agreement by the prepetition arrearage paid through the Chapter 13 trustee with postpetition plan payments made direct in the amount of One Hundred Fourteen and No/100 (\$114.00) Dollars per month. This result is consistent with the requirements of the regulation and the purpose of Chapter 13 of the Bankruptcy Code, to allow the debtor an opportunity to cure her financial difficulties to the extent possible while retaining her interest in property.

It is hereby ORDERED that the debtor's objection to claim of FmHA is sustained. It is further ORDERED that FmHA shall file an amended claim within thirty (30) days of the date of this order based upon a prepetition interest credit payment due of One Hundred Fourteen and No/100 (\$114.00) Dollars per month.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 11th day of July, 1991.